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8

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10   UNITED STATES DISTRICT COURT
11   CENTRAL DISTRICT OF CALIFORNIA
12   WESTERN DIVISION
13

14 OX LABS INC., a California corporation,	Case No. CV 18-5934-MWF(KSx)
15	**SUPPLEMENTAL DECLARATION OF AKBAR THOBHANI IN SUPPORT OF PRETRIAL DISPOSITIVE MOTION OF PLAINTIFF OX LABS INC.**
16 Plaintiff,	
17 v.	
18 BITPAY, INC., a Delaware corporation, and DOES 1-10,	
19	
20 Defendants.	Date: January 16, 2020, 3:00 p.m. Place: Courtroom 5A
21	
22	Pretrial Conference: January 27, 2020 Trial: February 4, 2020
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SUPPL. DECL. OF AKBAR THOBHANI ISO PLAINTIFF'S PRETRIAL DISPOSITIVE MOTION
Case No. CV 18-5934-MWF(KSx)

I, Akbar Thobhani, declare as follows:

1. I am a co-founder of Ox Labs Inc., the plaintiff in this matter, and SFOX, which has ratified the action (collectively hereinafter "Ox Labs"). I make this declaration in support of Ox Labs' Pretrial Dispositive Motion. If called upon, I could and would testify competently to these facts based on my personal knowledge.

2. I signed a Declaration in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment on August 18, 2019. I understand that our counsel filed that Declaration on August 18, and my signed and sworn Declaration is part of the record of this case, found at Electronic Docket Number 31-2. I am submitting this Supplemental Declaration to reaffirm and clarify a couple of points from my August 18, 2019 Declaration.

3. In my August 18, 2019 Declaration, I explained that in July 2015 Ox Labs inadvertently credited 200 more Bitcoins to defendant BitPay, Inc. ("BitPay") than BitPay should have received in the course of regular transactions on our platform. I explained that BitPay withdrew, kept and refused to return our Bitcoins after the crediting error was discovered, and BitPay admitted it should not have received those Bitcoins. I wish to clarify that the 200 Bitcoins at issue were and have always been the property of Ox Labs, and belonged to and were owned by Ox Labs at all relevant times.

4. After the crediting error was discovered in February 2017, I negotiated with BitPay, directly and then through our attorneys, asking for the return of our Bitcoins. In an email dated May 18, 2017, Tony Gallippi of BitPay told me that BitPay had transferred the 200 Bitcoins to Kraken, which is a different cryptocurrency exchange platform, and sold the Bitcoins there. Attached as **Exhibit A** is a true and correct copy of the email exchange in which Mr. Gallippi made that statement. I retrieved this email exchange from Ox Labs' records kept in

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1   the ordinary course of business. BitPay has refused to provide any further

2   information about what happened to the 200 Bitcoins and has not produced any

3   evidence, documentary or otherwise, showing that our Bitcoins were sold on

4   Kraken, to whom, on what date, at what price, or any other material information.

5   5.   As a result of BitPay's refusal to provide further information, Ox Labs

6   cannot "trace" the transactions BitPay made with Ox Labs' Bitcoins and cannot

7   make efforts to retrieve them. None of the documents BitPay has produced in this

8   case show any transactions on BitPay's part that sell or trade Ox Labs' 200

9   Bitcoins. In short, by refusing to return, transferring and/or selling Ox Labs' 200

10   Bitcoins without Ox Labs' consent, and refusing to provide any information about

11   them, information that would be uniquely in the possession of BitPay and not Ox

12   Labs, BitPay has substantially interfered with Ox Labs' property.

13   6.   I understand that BitPay has taken the position that it cannot return the

14   exact same 200 Bitcoins inadvertently credited to Bitpay by Ox Labs because it no

15   longer possesses them. However, Ox Labs does not seek the exact same Bitcoins.

16   We simply ask to have 200 Bitcoins restored to us. Bitcoins are virtual currency,

17   *i.e.*, they are a fungible medium of exchange and traded as such on SFOX, on

18   Kraken, and on other exchanges. My understanding is that BitPay is in the business

19   of helping its customers accept Bitcoins as payment as they do with more

20   traditional currencies. For purposes of making Ox Labs whole, one Bitcoin is in all

21   material respects the same as any other Bitcoin.

22   I declare under penalty of perjury under the laws of the United States of the

23   state of California that the foregoing is true and correct and that this declaration was

24   executed on December 20 2019, in Bellevue, Washington.

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26   _____
          Akbar Thobhani

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CERTIFICATE OF SERVICE

2   I certify that counsel of record, listed below, is being served on December 20,

3 2019, with a copy of this document through the CM/ECF Filing System as

4 identified on the Notice of Electronic Filing dated December 20, 2019.

5

6   /s/ *Anahit Samarjian*
                                                                Anahit Samarjian

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CERTIFICATE OF SERVICE
Case No. CV 18-5934-MWF(KSx)

Exhibit A

Gmail
by Google

Akbar Thobhani <akbar@sfox.com>

Deposit Ledger question

Tony Gallippi <tony@bitpay.com>   Thu, May 18, 2017 at 8:50 AM
To: Akbar Thobhani <akbar@sfox.com>
Cc: Bryan Krohn <bryan@bitpay.com>

Hi Akbar, yes this is our final offer

On Thu, May 18, 2017 at 11:44 AM, Akbar Thobhani <akbar@sfox.com> wrote:
Hi Tony, is that your final offer? Our second offer is very much in line with Bitpay paying close to initial amount and agreeing to trade with us in the future. I understand Bitcoin was withdrawn from the account. That is why we have gone out of our way to find options that have minimal, and in one case favorable, impact on Bitpay. As such, I kindly request you reconsider our offers.

On Thu, May 18, 2017 at 7:40 AM, Tony Gallippi <tony@bitpay.com> wrote:
Akbar,

As we discussed those coins were withdrawn from SFOX and then immediately sold at Kraken. We constantly move coins between exchanges. We acknowledge the duplicate credit and will agree to the dollar value at the time of the duplicate credit.

On Thu, May 18, 2017 at 9:36 AM, Akbar Thobhani <akbar@sfox.com> wrote:
Hi Tony, this is a follow up to our call last week.

Hi Bryan, since our conversation, we looked at the facts in further details (see attachment) and can see that the Bitcoin credited erroneously were transferred out of SFOX. As such, your offer for $56k does not seem fair.

As I mentioned to Tony, we want to find a solution that is fair to both parties. We have thus included possible options as a way for us to resolve the difference. You will see there options that are designed to have minimal net impact on Bitpay.

We are also open to considering other options or structures that you may have in mind. I am certain that we can find a mutually agreeable position on this matter.

Thank you Bryan and Tony for your consideration.

Best,
Akbar

On Mon, Apr 3, 2017 at 7:25 AM, Bryan Krohn <bryan@bitpay.com> wrote:
Hi Akbar,

Stephen, Tony and I discussed this again late on Friday and arrived at the same conclusion, the correct way to resolve this is to convert the 200 btc to our USD ledger at the rate of $282 per btc for a total debit $56.4kusd resulting in a negative USD ledger balance at SFOX.

Best regards,

Bryan

bitpay   **Bryan Krohn**
                           Chief Financial Officer
                           bryan@bitpay.com
                           404-919-3060

On Mar 31, 2017, at 6:26 PM, Akbar Thobhani <akbar@sfox.com> wrote:

Hi Bryan,

Hope you are doing well. I was following up on this to see if you had any thoughts.

Best,
Akbar

On Wed, Mar 22, 2017 at 1:33 PM, Akbar Thobhani <akbar@sfox.com> wrote:
Hi Bryan,

First of all, thank you for bringing this transaction to our attention. As a result of the transaction we have made quite a few changes at SFOX and hired a new accounting firm to ensure this is never repeated again.

As you pointed out, 200 bitcoins were erroneously deposited into Bitpay's account. Resolving this discrepancy, unfortunately, is a zero sum game; if you paid 200 btc back to us, you would incur loss. If you paid us the funds in USD (approx $57,300) then we would incur the loss. SXLABS0004

We cannot ask you to incur the loss. As such settling this in USD seems like the logical route.

We considered various options such as:

1. requesting you to meet us half way paying settling this at a higher price
2. providing trading credit to you for any payment you made above the USD amount.

For us, having you as a customer and giving us an opportunity to earn this back in the future will be our preferred route.

The ball is really in our court, so to speak, so please let us know how you would like to proceed.

Best,
Akbar

On Wed, Feb 22, 2017 at 10:35 AM, Bryan Krohn <bryan@bitpay.com> wrote:
sorry 404-919-3060

Best regards,

Bryan

bitpay   **Bryan Krohn**
Chief Financial Officer
bryan@bitpay.com
404-919-3060

On Feb 22, 2017, at 1:29 PM, Akbar Thobhani <akbar@sfox.com> wrote:

Hi Bryan,

Is it possible to jump on a call briefly?

Akbar

On Wed, Feb 22, 2017 at 2:17 AM, Bryan Krohn <bryan@bitpay.com> wrote:
Hi George, the answer is that you should debit our usd ledger for approx 56k which was the price at the time the error was made.
We are not sending you 200 btc at todays prices so you can take a gain, conversely, If today's price were less than the price on the
day the error was made, I would still pay you the price at the time the error was made. This is the only acceptable outcome for
your error.

Best regards,

Bryan

bitpay   **Bryan Krohn**
Chief Financial Officer
bryan@bitpay.com
404-919-3060

On Feb 21, 2017, at 9:50 PM, George Melika <g@sfox.com> wrote:

Hi Bryan,

I spoke with Kirstie earlier today, and confirmed that those 200btc deposits were erroneous. Can we get on the
phone to figure out next steps?

Thanks,
George

On Tue, Feb 21, 2017 at 8:05 AM Bryan Krohn <bryan@bitpay.com> wrote:
George, please see our Controller's comments below. Please work directly with Kirstie to resolve this issue.
Thank you.

Best regards,

Bryan

Begin forwarded message:

From: Kirstie Getch <kirstie@bitpay.com>
Subject: Fwd: Deposit Ledger question
Date: February 21, 2017 at 10:21:06 AM EST
To: Bryan Krohn <bryan@bitpay.com>
Cc: Patrick Nagurny <patrick@bitpay.com>

Hmmmm -

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so on 7/10 200 btc were to go out of SFOX, but only 99.999 went, the other 100 came back in as a deposit; and the 300 btc were to go out of SFOX, but only 199.999 went, the other 100 came back in as a deposit. So you would think that you would see these as withdrawals on the withdrawals section? I only see

7/10/15 23:50	-200	Kraken
7/11/15 20:49	-200	ItBit
7/28/15 12:54	-200	Copay

Which have been accounted for. Which is why I think we are not out of balance with SFOX - I think they should have included the following withdrawals:

7/10 -300
7/10 -200

So if they want to reverse the credit, they also need to gross up the withdrawals. We need them to provide us with the detail on the other withdrawals before we agree to them debiting our account!

Kirstie Getch
Controller
bitpay.com

Begin forwarded message:

From: Bryan Krohn <bryan@bitpay.com>
Subject: Fwd: Deposit Ledger question
Date: February 20, 2017 at 8:11:07 PM EST
To: Getch Kirstie <kirstie@bitpay.com>, "Mr. Nugurny Patrick" <patrick@bitpay.com>

Sent from iPhone
.bk

Begin forwarded message:

From: George Melika <g@sfox.com>
Date: February 20, 2017 at 7:47:11 PM EST
To: Bryan Krohn <bryan@bitpay.com>
Cc: Akbar Thobhani <akbar@sfox.com>
Subject: Re: Deposit Ledger question

Hi Bryan,

We have gone back and analyzed all of the deposits on the account. We have found 3 transactions where you got credited incorrectly. The 2 100btc transactions you mentioned and a 0.0001btc transaction.

https://insight.bitpay.com/tx/1482569a7d9a88f42a32394c8d9507 83aa73119fd28f55150445e1ed7a75bb7e
https://insight.bitpay.com/tx/28e31720008ebaf0dd53c27ae53b53 d98152efd431ee2be32c60207c31cc4e45
https://insight.bitpay.com/tx/17cded4d91dabfad0fd921d9f74d4b 4fd1b34d5d528191e9a9b4774c7046a9b2

As you can see, in all 3 cases the bitcoin came from the 1aFnRQZ... address (your old SFOX deposit address) back to itself. I am also attaching a file detailing all deposits made on the account for your review.

From an accounting perspective, the easiest way to fix this would be to reverse the btc credit. I'd be happy to get on a call and discuss this further if you'd like.

Thanks,
George

On Mon, Feb 20, 2017 at 6:17 AM Bryan Krohn <bryan@bitpay.com> wrote:
> Thanks George, looking forward to your findings today.
>
> Best regards,
>
> Bryan

On Feb 16, 2017, at 10:47 PM, George Melika <g@sfox.com> wrote:

Hi Bryan,

I've looked into this and you are correct. It looks like this happened during the time that we switched to a new wallet. It seems that while moving the funds, the change

amounts were sent to your address instead of an internal address and counted them as deposits for you.

We are going to look into the rest of the transactions and will get back to you on Monday.

Thank you,
George

On Thu, Feb 16, 2017 at 11:23 AM Bryan Krohn <bryan@bitpay.com> wrote:
> Thank you both.
>
> Best regards,
>
> Bryan

> On Feb 16, 2017, at 2:07 PM, Akbar Thobhani <akbar@sfox.com> wrote:
>
> Adding George
>
> On Feb 16, 2017 10:48 AM, "Bryan Krohn" <bryan@bitpay.com> wrote:
> > Hello Akbar,
> >
> > Who can I work with to get transaction ID detail on two btc deposits that came into our BitPay account at SFOX on 7/10/15 at 17:46? They are 100 btc each and our auditors are requesting info on it and we see no such activity on our end going out. Thanks in advance.
> >
> >
> > Best regards,
> >
> > Bryan

--
Tony Gallippi
Co-founder and Executive Chairman
BitPay, Inc.
https://bitpay.com

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